



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      FF, MND, MNSD, MNR, O

### Introduction

This decision deals with two applications for dispute resolution, one brought by the tenant and one brought by the landlords. Both files were heard together.

The tenant's application is a request for a monetary order for return of double the security deposit for a total order of \$3750.00.

The landlord's application is a request for a monetary order for \$14,937.71, and a request to retain the full security/pet deposit towards the claim.

A substantial amount of documentary evidence, photo evidence, and written arguments has been submitted by the parties prior to the hearing. I have thoroughly reviewed all submissions.

I also gave the parties the opportunity to give their evidence orally and the parties were given the opportunity to ask questions of the other parties.

All testimony was taken under affirmation.

### Issue(s) to be Decided

Are the tenants entitled to an Order for return of double their security/pet deposit?

Is the landlord entitled to a monetary order for \$14,937.71, and an order to retain the full security/pet deposit towards the claim?

## Tenant's application

### Background and Evidence

This tenancy began on July 1, 2009 and the tenants paid a combined security/pet deposit of \$1875.00.

This tenancy ended on March 17, 2013, and the landlord had a forwarding address in writing on that same date.

To date the landlord has not returned any of the security/pet deposit, and did not apply for dispute resolution within the 15 day time limit required under the Act.

The landlords agent testified that:

- He has not returned the security/pet deposit, because on the move out inspection report, the tenants agreed that all utilities must be paid before the security deposit can be refunded, and at this time, there are still a significant amount of utilities outstanding.

The tenant testified that:

- They never gave the landlord any permission to retain the security deposit, and in fact, the landlord has never given them a copy of the moveout inspection report.
- They did sign the move-out inspection report, however when they signed it they were only agreeing that the report fairly represented the condition of the rental unit and they were not agreeing that the security deposit could be held.
- When they signed the move-out inspection report, the comment that states that the utilities must be paid before the security deposit can be refunded was not even on the report and must have been added afterwards.
- They therefore believe the landlord should be returning double their security deposit.

### Analysis

The Residential Tenancy Act states that, if the landlord does not either return the security/pet deposit, get the tenants written permission to keep all or part of the security/pet deposit, or apply for dispute resolution within 15 days after the later of the date the tenancy ends or the date the landlord receives the tenants forwarding address in writing, the landlord must pay the tenant double the amount of security/pet deposit.

The landlord has not returned the tenants security/pet deposit nor did the landlord apply for dispute resolution to keep any or all of tenant's security/pet deposit within the time limit set out in the Act.

This tenancy ended on March 17, 2013, and the landlord had a forwarding address in writing by March 17, 2013, and there is no evidence to show that the tenant's right to return of the deposit has been extinguished.

The landlord's agent has argued that the tenants gave him written permission to retain the security deposit until the utilities for the rental unit were paid, however it's my finding that the landlord has not met the burden of proving that claim.

The landlord has admitted that he did not give the tenants a copy of the move-out inspection report, and therefore it is of little value as there is no way of knowing what was on the original report and whether or not anything has been added.

Therefore it is my decision that the landlord must pay double the amount of the security/pet deposit to the tenant.

The tenants paid a combined security/pet deposit of \$1875.00, and therefore the landlord must pay \$3750.00 to the tenants

I also allow the request for recovery of the tenant's \$50.00 filing fee.

### Background and Evidence

The landlord's agent testified that:

- Under the tenancy agreement the tenants were responsible for the utilities, however at the end of the tenancy there are still a significant amount of utilities outstanding as follows:

Electrical utility outstanding	\$499.62
Gas utility outstanding	\$225.18
Water utility outstanding	\$649.71
Total	\$1374.51

- At the end of the tenancy there was a move-out inspection done however at that time he did not find any need for further cleaning or repairs, however when the new tenants went to move into the rental unit they found significant deficiencies in both cleaning and the need for repairs.

- He is therefore now requesting the costs of carpet cleaning, a general cleaning, carpet repairs, yard waste removal, and the replacement of a destroyed carpet as follows:

First carpet cleaning	\$246.40
Second carpet cleaning	\$403.20
Housecleaning	\$810.00
Carpet repair-materials	\$66.06
Carpet repair-labor	\$224.00
Yard waste cleanup	\$240.00
Replace destroyed carpets	\$9995.31
Total	\$11984.97

- There was also a freezer in the rental unit at the beginning of the tenancy, and the tenants disposed of that freezer without any permission from the landlords.
- The tenants also put a large hole in the outdoor metal shed, and covered the shed in graffiti.
- They are therefore also asking for the following costs:

Estimated replacement cost of freezer	\$250.00
Estimated Depreciated replacement cost of shed	\$300.00
Total	\$550.00

- The tenants also failed to pay any rent for the month of March 2013, and therefore they are requesting prorated rent to March 17, 2013 for a total of \$1028.23.

They are therefore requesting a total claim of \$14,937.71, and recovery of the \$100.00 filing fee.

The tenants testified that:

- They do not dispute the claim for the outstanding utilities of \$1374.51; however the landlord failed to supply them with copies of the utility invoices or a demand letter, and therefore they were unaware of how much utilities were outstanding.
- They did not pay any rent for the month of March 2013; however they dispute this portion of the claim because the landlord's agent told them they would not have to pay any rent as they had saved him money by finding a new tenant.
- They also dispute the claim for damages and cleaning, as they did no damage to the rental unit and left the unit completely clean when they vacated.
- When they did the move-out inspection with the landlord's agent they walked throughout the whole house and at no time did the landlord point out any

deficiencies whatsoever and they believe it's unreasonable for the landlord to come back three months later claiming all these damages and need for cleaning.

- They did not receive a copy of the move-out inspection report at the end of the tenancy, however even the one supplied by the landlord for the today's hearing does not point out any damages or need for further cleaning, or yard waste removal.
- They therefore believe the landlords claim for cleaning, repairs and yard waste removal should be dismissed in full.
- As far as the freezer is concerned, they did throw out a freezer that was at the rental property, but they disposed of it because it did not work, and they thought it had been left there by the previous tenants as there was no mention of a freezer on the tenancy agreement. The landlord claims it was listed on the move-in inspection report, however, as with the move-out inspection report, the landlord never gave them a copy of the move-in inspection report.
- They did not cut a hole in the storage shed, the hole was already in the shed when they moved in, to allow access to a tap, they simply covered the hole with a sign they found at the side of the house; however their sons and friends did write graffiti all over the shed and therefore they are willing to remove and replace the shed at their own cost.

### Analysis

The tenants are not disputing the claim for outstanding utilities, and therefore I will allow the landlords claim for utilities totaling \$1374.51.

I will also allow the landlords claim for \$1020.23 rent from March 1 to March 17, 2013, as the tenants lived in the rental unit at that time and there is no evidence to support their claim that the landlord told them they would not have to pay any rent in March 2013.

I will not however allow the landlords claim for cleaning and repairs to the rental unit.

The purpose of doing a move-out inspection is so that both the landlord and the tenants can inspect the rental unit together to see if there is any need for further cleaning and repairs. If there is a further need for cleaning and repairs it is the landlord's responsibility to ensure that any deficiencies are documented on the move-out inspection report.

In this case the landlord did not list any deficiencies on the move-out inspection report, and it's my finding that he cannot come back three months later and request compensation for deficiencies he claims were found after the fact.

I also deny the claim for the missing freezer, because the landlord has not supplied any independent estimates of the cost of replacing that freezer, nor has the landlord given any information as to the condition of the freezer. The tenants claim the freezer did not work and in the absence of any evidence to the contrary I accept that claim.

I also deny the claim for replacing the outdoor shed, as I am not convinced that the shed had any significant value as it was an older shed and the landlord has provided no independent estimates of the replacement value. The tenants have agreed to remove and replace the shed themselves and I suggest that the landlords take the tenants up on that offer.

Therefore the total amount of the landlord's claim that I have allowed is the outstanding utilities totaling \$2394.74.

I will also allow \$50.00 of the filing fee, as I have allowed a portion of the landlords claim.

### Conclusion

I have allowed the tenants full claim of \$3800.00, and I have allowed \$2444.74 of the landlords claim and I therefore set off the \$2444.74 against the \$3800.00, and I have issued a monetary order for the landlord to pay \$1,355.26 to the tenants.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: June 26, 2013

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Residential Tenancy Branch